

### **REMARKS/ARGUMENTS**

These remarks are made in response to the Office Action of September 2, 2009 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Office is expressly authorized to charge any deficiencies or credit any overpayments to Deposit Account No. 14-1437.

#### **Claim Rejections – 35 USC § 112**

Claims 1-5, 7-8, 10, and 24-25 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

More specifically, it was asserted that there is no citation of the limitation “according to real time network conditions” in the body of the claims and which steps are affected by this limitation. Applicants are not aware of any requirement that the limitation in the preamble has to be cited in the body of the claim. Also, Applicants believe that a person skilled in the art would clearly understand from the context of the claim language that the real time network conditions can include the determined effectiveness of the electronic campaign over each of the plurality of delivery network channels and the identified available network capacity, according to which the outbound transmission flow rate for each of the plurality of delivery network channels can be dynamically modified. Nevertheless, the limitation “according to real time network conditions” has been deleted in order to facilitate prosecution of the instant application.

Regarding Claim 24, according to the Examiner’s request, the claim has been amended in a way that it no longer contains the “means for” language.

#### **Claim Rejections – 35 USC § 103**

Claims 1-5, 7-8, 10, and 24-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,006,197 to d'Eon, *et al.* (hereafter d'Eon) in view of U.S. Patent 6,816,903 to Rakoshitz, *et al.* (hereinafter Rakoshitz), and further in view of

U.S. Patent 7,185,353 to Schlack (hereinafter Schlack). Claims 1-5, 7-8, 10, and 24-25 were rejected under 103(a) as being unpatentable over U.S. Published Patent Application 2002/0083442 to Eldering (hereinafter Eldering '442) in view of non-patent literature "Web Marketing through Oracle iMarketing" by Bellare (Oracle iMarketing), in view of Rakoshitz and Schlack.

Although Applicants respectfully disagree with the rejections, Applicants have slightly modified the language of independent Claims 1 and 24-25 in an effort to even more clearly define the present invention. The claim amendments are fully supported by the original disclosure and no new matter has been introduced.

#### *Aspects of Applicants' Invention*

It may be helpful to reiterate certain aspects of Applicants' invention prior to addressing the cited references. One embodiment of the invention, as typified by Claim 1, is a method of dynamically modifying an electronic campaign.

The method can include identifying available network capacity of a combined packet-switched and circuit-switched network comprising a plurality of distinct types of delivery network channels; and transmitting electronic content for the electronic campaign to consumers over each of the plurality of delivery network channels of the combined network according to a predetermined outbound transmission flow rate for each of the plurality of delivery network channels. The plurality of distinct delivery network channels can include at least one private network channel for communicating with a private network device, at least one telephonic channel for communicating with a telephonic device, and at least one public network channel for communicating with a public Web site.

The method also can include receiving consumer responses associated with each of the plurality of delivery network channels used to transmit the electronic content;

analyzing the received consumer responses and determining an effectiveness of the electronic campaign over each of the plurality of delivery network channels.

The method further can include selectively redirecting at least a portion of the electronic content from delivery network channels determined to be less effective to a delivery network channel determined to be more effective, and dynamically modifying the outbound transmission flow rate for each of the plurality of delivery network channels according to the determined effectiveness of the electronic campaign over each of the plurality of delivery network channels and the identified available network capacity.

See, e.g., Specification, page 12, line 16 to page 14, line 2.

**The Claims Define Over The Prior Art**

D'Eon discloses a Web advertising measurement system that correlates the number of impressions of Web advertisements with post-impression transactional activity to measure the effectiveness of the advertisements. When a user clicks on a banner advertisement, an impression is established and the user's identification is recorded. Then, when the user undertakes post-impression transactional activity such as downloading software related to the advertisement, ordering products and services related to the advertisement, and so on, the transactional activity along with the user's identification is recorded. Based on the user identifications, the numbers of impressions associated with the advertisements are correlated to the post-impression transactional activity as a measure of effectiveness of each advertisement. See the Abstract.

Clearly, the subject matter of d'Eon, which concerns measuring the effectiveness of a Web banner advertisement by correlating the number of impressions of the Web banner advertisement with post-impression transactional activity, is totally different from the subject matter of the present invention, which concerns dynamically modifying the outbound transmission flow rate of electronic content of a particular electronic campaign over each of the plurality of delivery network channels based on determined effectiveness

of the electronic campaign over each of the plurality of delivery network channels and the identified available network capacity. It is noted that d'Eon measures the effectiveness of different Web banner advertisements, whereas the present invention determines the effectiveness of the same advertisement or electronic campaign over different delivery channels (private network channel, telephonic channel, public network channel, etc.) in order to dynamically modify the outbound transmission flow rate of the advertisement over each delivery channel.

It was asserted in the Office Action that in col. 1, lines 50-55, d'Eon teaches the step of "*ascertaining which banners are and are not effective in causing a user to make a transactional decision,*" therefore, it would have been obvious to improve (modify) the campaign effectiveness by deleting the not effective banners and use only the effective banner in order to be profitable, i.e. increasing AD #1 while decreasing or deleting AD #2, as shown in Fig. 6.

However, as already discussed above, in the present invention, it is the effectiveness of the same electronic campaign or advertisement over each of the plurality of different delivery network channels that is being analyzed, not the effectiveness of different campaigns or advertisements over the same delivery channel as in d'Eon.

The other cited references do not make up for the deficiencies of d'Eon as discussed above.

Eldering '442 discloses a method and apparatus for scheduling and inserting advertisements into a plurality of presentation channels in a television communications network in which the presentation channels contain the same programming, but different advertisements. Clearly, Eldering '442 only concerns delivering advertisements via one type of delivery network channel, namely the television communications network. The different presentation channels in the same television communications network are not the different types of delivering network channels in the sense of the present invention. It is noted that in the present invention the advertisement is delivered over a plurality of

distinct types of delivery network channels including at least one private network channel for communicating with a private network device, at least one telephonic channel for communicating with telephonic device, **and** at least one public network channel for communicating with a public Web site.

Oracle iMarketing discloses measuring effectiveness of the Web banner advertisement and modifying the marketing campaign according to the measured effectiveness. Similar to d'Eon, Oracle iMarketing also does not disclose analyzing the effectiveness of the same electronic campaign over each of the plurality of delivery network channels in order to dynamically modify the outbound transmission flow rate of the advertisement over each of the delivery channels as in the present invention.

The other cited references do not make up for the deficiencies of Eldering '442 in view of Oracle iMarketing.

Accordingly, the cited references, alone or in combination, fail to disclose or suggest each and every element of Claims 1 and 24-25. Applicants therefore respectfully submit that Claims 1 and 24-25 define over the prior art. Furthermore, as each of the remaining claims depends from Claim 1 while reciting additional features, Applicants further respectfully submit that the remaining claims likewise define over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 103 be withdrawn.

### **CONCLUSION**

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the

Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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